

《逃犯（德國）令》及《逃犯（大韓民國）令》小組委員會

在 2006 年 12 月 11 日《逃犯（德國）令》及《逃犯（大韓民國）令》小組委員會的會議上，政府當局被要求-

- (a) 表明《逃犯（德國）令》附表第八條第(3)款中的“其他主管機關”包括香港的裁判官；
- (b) 如要求方將沒收被移交的人的財產變現而取得利益，研究有否途徑從要求方取回香港就移交逃犯所承擔的費用；及
- (c) 就要求方要求移交的人在香港可得到的法律協助提供資料，包括涉及的法律程序，以及裁判法院的當值律師服務和法律援助署提供的法律代表，是否有足夠具備處理涉及移交逃犯個案的專門知識的律師。

2. 本文載述政府當局的回應如下-

- (a) 《裁判官條例》(第 227 章)第 9、73 及 74 條賦權香港的裁判官發出逮捕手令。根據香港法例，他們是發出逮捕手令的主管機關。

LexisNexis Butterworths 出版的 Hong Kong Legal Dictionary 形容法官為“獲授予權力就當事各方爭議的問題作出裁決的人，並可向犯罪者施以適當的懲罰。”這個詞語涵蓋香港的裁判官。引文的副本夾附於附件。

雖然香港與德國關於移交逃犯的協定第八條第(3)款略去“裁判官”一詞，但締約雙方的用意是“法官”和“主管機

關”已涵蓋“裁判官”，而該條文略去“裁判官”，不會對接受由裁判官發出的逮捕手令構成問題。

- (b) 香港與德國關於移交逃犯的協定第十二條第(2)款規定，被要求方須負擔逮捕和羈留逃犯的開支，以及為確保能夠移交逃犯而進行的法律程序所需的開支。類似條文亦載於移交逃犯協定的範本和香港與其他司法管轄區簽訂並已生效的移交逃犯協定。有關如何配分被沒收犯罪得益的事宜，屬刑事司法互助協議涵蓋的範疇。
- (c) 在裁判法院進行的交付拘押聆訊，被要求移交的人可選擇當值律師計劃提供的律師為他的法律代表。當值律司服務備有對這些程序有經驗或興趣的執業律師名單。如被要求移交的人被命令交付拘押，法庭會告知他有權透過申請人身保護令對該命令提出上訴。如移交令已作出，他可提出司法覆核。有關人身保護令和司法覆核的聆訊會在原訟法庭或更高級的法庭進行，該人可就此申請法律援助。根據法律援助署，就行政法/司法覆核的範疇具備專門知識的律師和大律師是足夠的。

保安局

律政司國際法律科

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Joint will

Joint will The embodiment of the wills of two or more persons jointly executed and expressed in the one testamentary instrument. As each of the joint testators dies, the will is treated and admitted to probate as their separate will. A joint will may be revoked by one of the testators without the consent of the other testator or testators but only to the extent of the terms of his or her will: *In the Goods of Letitia Lovegrove* (1862) 2 Sw & Tr 453. See also **Grant of probate**; **Mutual wills**.

Journal entry For accounting purposes, a record of debits and credits in a general journal analysing transactions which incorporate entries such as adjustments to accounts, accruals, prepayments, transfers, and closing entries.

Joyriding A colloquial expression commonly applied to the offence of taking a motor vehicle or other conveyance for one's own or another's use without the consent of the owner or other lawful authority and with the intent to keep it or permanently deprive the owner of it, or driving a vehicle or allowing oneself to be carried in it knowing it to have been taken without authority. There is no offence of joyriding as such, but such conduct is generally charged and punished as 'Taking conveyance without authority': *Theft Ordinance* (Cap 210) s 14. See also **Larceny**.

JP See **Justice of the Peace**.

Judge 1. To adjudicate, try, grant remedy or pass sentence. 2. A person invested with authority to decide questions in dispute between parties, and to afford appropriate punishment to offenders. Judges in Hong Kong SAR are appointed by the Chief Executive on the recommendation of an independent commission composed of local judges, legal professionals, and eminent individuals (the **Judicial Officers Recommendation Commission**). Judges are chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions: *Basic Law* art 88, 92. At least ten years' and five years' legal practice experience are mandatory for appointment as judge of the High Court and District Court respectively: *High Court Ordinance* (Cap 4) s 9(1); *District Court Ordinance* (Cap 336) s 5. For appointment as a magistrate, no less than five years' legal practice experience is required usually. A judge may only be removed for inability to discharge his or her duties, or for misbehaviour, by the Chief Executive on the recommendation of a tribunal appointed by the Chief Justice of the Court of Final Appeal ('CJ') and consisting of not fewer than three local judges. Likewise, the CJ may be investigated only for inability to discharge his or her duties, or for misbehaviour, by a tribunal appointed by the Chief Executive and consisting of not fewer than five local judges and may be removed by the Chief Executive on the recommendation of the tribunal: *Basic Law* art 89. Judges have security of tenure until they

reach retirement age (either 60 or 65 years for District Court judges and 65 for judges of the Court of Final Appeal and the High Court): *District Court Ordinance* (Cap 336) s 11A; *High Court Ordinance* (Cap 4) s 11A; *Hong Kong Court of Final Appeal Ordinance* (Cap 484) s 14. Magistrates may be appointed on pensionable terms or on contract. If a judge dies after a hearing has commenced, the proceedings may be started anew or, with the consent of the parties, another judge be substituted to proceed with the cause and give judgment based on evidence already received and recorded, and upon further evidence adduced in the proceedings: for example, *District Court Ordinance* (Cap 336) s 62.

Judge of the Court of Final Appeal The Chief Justice, a permanent judge and a non-permanent judge: *Hong Kong Court of Final Appeal Ordinance* (Cap 484) s 2(1). There shall be not less than three permanent judges. The Court of Final Appeal may as required invite non-permanent Hong Kong judges, or judges from other common law jurisdictions to sit on the Court: s 5. The Chief Justice and the permanent judges are appointed by the Chief Executive acting in accordance with the recommendation of the **Judicial Officers Recommendation Commission**: ss 6, 7. A person is eligible to be appointed as the Chief Justice or as a permanent judge if he is the Chief Judge of the High Court, a Justice of Appeal, or a judge of the Court of First Instance, or a barrister who has practised as a barrister or solicitor in Hong Kong for a period of at least 10 years: s 12(1). There are lists of non-permanent Hong Kong judges and of judges from other common law jurisdictions, that consist of judges appointed by the Chief Executive acting in accordance with the recommendation: ss 8, 9. The total number of persons holding office as non-permanent judges shall not exceed 30 at any one time: s 10. A person who has been appointed as the Chief Justice, a permanent judge or a non-permanent judge shall not be entitled to practise as a barrister or solicitor in Hong Kong either while he holds office as such a judge or at any time after he ceases for any reason to hold office: s 13. See also **Chief Justice**; **Court of Final Appeal**.

Judge made law The common law deriving from judicial precedent and decisions, as opposed to law having its source in legislation or administrative regulation. The common law develops on a case by case basis where, through statutory interpretation, application by analogy, and reconsideration of legal principles, the law is continually refined and created. In higher courts where there are more than one judge and dissenting judgments, the majority judgment becomes the decision which forms the judicial precedent. A minority judgment may still have persuasive, though not binding, effect on a future court decision. See also **Common law**; **Precedent**.

Judge's chambers See **Chambers**.